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ARTICLES

STORMY SEAS? ANALYSIS OF NEW OIL POLLUTION LAWS IN THE WEST COAST STATES

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I. INTRODUCTION

In the early morning hours of March 24, 1989, the crude-oil tanker Exxon Valdez slipped its moorings and set sail on a voyage through Prince William Sound, Alaska, that would forever change the way the public and the government think about the risks involved in the oil transportation industry.1 The T/V Exxon Valdez struck a well-known hazard, Bligh Reef, and began to leak, discharging over 11,000,000 gallons of Alaskan North Slope crude oil into the calm waters of Prince William Sound.2 Before the Exxon Valdez's spilled oil even finished its damaging transit along the pristine Alaskan coastline, policy-makers at federal and state levels began to

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act. On the federal level, a contentious battle in Congress resulted in the passage of the Oil Pollution Act of 1990 (OPA '90). As often occurs in the case of proposed, sweeping federal legislation, many states fought hard to ensure that the new federal law would not pre-empt their right to enhance environmental protection and liability standards. The states won this battle, and the Oil Pollution Act of 1990, as enacted, permits states to impose liabilities on polluters in excess of those imposed under the new federal law. Ensuing state legislation is highly significant because an oil shipper, in addition to complying with the new federal law, must contend with a variety of new state laws requiring compliance with oil spill planning and response standards, and imposing high-to-unlimited liability exposure.

This article provides a brief overview of the laws passed by West Coast states as they have responded to citizen and special interest desires to enhance oil spill prevention and response capabilities. The States of Alaska, California, Oregon, and Washington have each taken broad steps to impose new regulations and liabilities. This article is intended

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5. See Wagner, supra note 3.

6. Oil Pollution Act, supra note 4, § 1018(a). For a thorough analysis of OPA '90, see Rodriguez & Jaffe, supra note 4.

7. See generally, Oil Spill Bill: Mitchell Prevails Over Shippers; Firm Stance on Liability Leads Some Companies to Announce Pullout from U.S. Market, Wash. Post, July 24, 1990, at A4 (voicing tanker operators' claims that unlimited liability exposure will preclude them from serving unlimited liability states).


10. See discussion on Oregon regulations, infra text accompanying notes 48-60, 116-155, 221-236.

to provide a useful resource for ship owners and oil shippers negotiating these new, somewhat stormy, statutory seas, and for attorneys seeking a broad overview of the new West Coast regulatory environment.

The article poses the same three primary questions concerning each of the four states: (1) Which state agency must be dealt with?12 (2) What is required to ship oil?13 and (3) What are the oil spill response requirements?14 The article also discusses the response-funding provision found in the Alaska Statute,15 the California regulations,16 the Oil Spill Prevention Fund of Oregon,17 and Alaska’s unique spill response program.18

II. BACKGROUND

A. State Agency in Control

1. Alaska

It is the announced policy of the State of Alaska to “conserve, improve and protect its natural resources and environment and control water, land, and air pollution, in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well-being.”19 In meeting this policy commitment, the Alaska Department of Environmental Conversion (ADEC) has been charged with coordinating the environmental plans, functions, powers, and programs of the state.20

After the Valdez oil spill captured headlines worldwide, responses by the oil industry and Alaska regulators were heavily criticized.21 State policy-makers thereupon effected

13. See infra text accompanying notes 72-177.
14. See infra text accompanying notes 77-83.
15. See discussion on Alaska funding provisions, infra text accompanying notes 258-269.
16. See discussion on California funding provisions, infra text accompanying notes 270-301.
17. See discussion on Oregon funding provisions, infra text accompanying notes 302-315.
18. See discussion on Alaska’s response program, infra text accompanying notes 316-320.
19. ALASKA STAT. § 46.03.010(a) (West 1991).
20. Id. § 46.03.020 (detailing the powers of the department).
several changes in Alaska's oil pollution laws. Steps were taken to enhance the statutory requirements levied against the marine oil transportation industry in order to foster prevention of, and response to, oil spills in Alaska's waters.

Charges of inadequate response by ADEC flew in the wake of the Exxon Valdez oil spill. In light of perceived and admitted shortcomings, ADEC has been charged with preparing and annually reviewing, and revising as necessary, a statewide master oil plan.

Article 2 of Chapter 46 of the Alaska Statutes addresses the state's duty to plan responses to an oil spill. The State now requires of itself a state master plan and a hazardous substance discharge prevention and contingency plan, in addition to regional plans.

The state master plan is designed to take into account the new planning standards required for potential spillers. To facilitate interagency and inter-jurisdictional roles in managing a response to a spill, the state master plan is required to use an incident command system that clarifies and specifies the respective responsibilities of agencies likely to become involved in an oil spill response. In preparing and annually reviewing the state master plan, the Department is required to consult with representatives of municipal and regional organizations, and to provide the public and legislature with an opportunity to review and comment on the plan.

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23. Id.
24. For a discussion of proposed lawsuits stemming from the spill, see generally articles cited supra note 21.
25. ALASKA STAT. § 46.04.200(a) (West 1991) (detailing the requirements of the state master plan).
26. Id. §§ 46.03.020-46.03.045 (concerning the Department of Environmental Conservation).
27. Id. § 46.04.200.
28. Id. § 46.04.200(a).
29. Id. § 46.04.210(a).
30. Id. § 46.04.200(b)(1).
31. Id. § 46.04.200(c)(1). The National Interagency Incident Management System (NIIMS), which is currently implemented by federal and state firefighting agencies, was not formally adapted to allow flexibility by response planners. NIIMS, however, does serve as the foundation for the Incident Command System (ICS) utilized by both federal and state oil spill response agencies.
32. Id. § 46.04.200(c)(1).
33. Id. §§ 46.04.200(c)(2), (c)(3).
In order to test the response status of the state master plan, the commissioner of the Department is granted authority to require or schedule unannounced oil spill drills. These drills are intended to test the sufficiency of the required contingency plans or the cleanup plans of parties considered in the development of Alaska's incident command system.

Finally, the Department must submit the plan and any annual revisions to the Alaska State Emergency Response Commission (ASERC) for its review and approval. The ASERC is a required statewide emergency planning committee.

With respect to regional planning, the State requires the Department to prepare and annually review regional master plans. Any region of Alaska, the boundaries of which are determined by the commissioner by regulation, in which the Department is required to review and approve an oil discharge prevention and contingency plan submitted by a tank vessel or oil barge, will have a plan to coordinate the Department's response to spills.

2. California

The State of California passed the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act in 1990. The bill sets forth a new and "comprehensive" oil spill prevention and response program for state waters of California, within the Department of Fish and Game.

The Act creates a position, the Administrator, within the Department of Fish and Game. The Administrator, acting

34. Id. § 46.04.200(c)(4).
35. Id.
36. Id. § 46.04.200(c)(5).
38. ALASKA STAT. § 46.04.210(a) (West 1991).
39. Id.
41. See CAL. GOV’T CODE § 8574.10(a) (West 1992) (establishing the Director of Fish and Game as the chair of the review subcommittee of the State Interagency Oil Spill Committee (SIOSC)).
42. Id. § 8670.4. Essentially, the administrator is responsible for an analysis of California's system of "liability and financial responsibility relating to the transport, handling, and storage of oil in state marine waters . . . ." See id. (historical notes). The administrator must make an annual report at the end of each year to the Governor and the Legislature on the adequacy of prevention
at the direction of the Governor, is charged with implementing state activities related to a broad range of oil spill issues.\textsuperscript{43} The Administrator also represents California in any coordinated response efforts with the federal government.\textsuperscript{44}

In addition, the Act creates the State Interagency Oil Spill Committee (SIOSC).\textsuperscript{45} Consisting of representatives from eighteen agency and regional boards, the SIOSC is chaired by the Administrator.\textsuperscript{46} All regulations and guidelines related to oil spill contingency planning, including both prevention and response plans, must be developed in consultation with the SIOSC.\textsuperscript{47}

3. Oregon

Oregon law provides that no waste may be discharged into any waters of the state.\textsuperscript{48} The Department of Environmental Quality\textsuperscript{49} is assigned the responsibility of taking such action as is necessary to carry out this stated policy.\textsuperscript{50} The Department of Environmental Quality is charged with the duty to ensure adequate state capability to respond to an oil spill and compliance with federal regulations.\textsuperscript{51} Additionally, the Department is required to develop a method of natu-
In cooperation with industry and the United States Coast Guard, the Department is also required to develop local programs to provide oil discharge response training to fishing boat operators and marinas. In order to enhance the Department's ability to respond to a major oil discharge, an incident command system must be adopted by the Department.

The Department of Environmental Quality is also required to develop an integrated, interagency response plan for oil or hazardous material spills in the Columbia River, the Willamette River, and the coastal waters and estuaries of Oregon. The plan will include maps designating specific areas of environmental concern or access. An index that includes information necessary to contact organizations or persons in the event of an oil or hazardous material spill also must be compiled.

An important requirement of the plan is the Department's spill response strategy. This strategy must include methods for discovering a spill, agency notification procedures, evaluation, and initial response for containment and cleanup. The spill response strategy must also include provisions for documenting the response measures taken and procedures for state cost recovery.

Finally, the plan must include provisions for coordinating oil spill response procedures for coastal and interstate waters with the States of Washington and California.

52. Id. § 468B.395(1) (the method must include market and non-market values in assessing damages).
53. Id. § 468B.395(4). Note that § 468B.395(2) requires cooperation with other states to develop a prevention education program for operators of vessels. Id. § 468B.395(2).
54. Id. § 468B.395(4). The statute does not designate the National Interagency Incident Management System (NIIMS). However, like most states, some NIIMS principles will likely be adopted in the department's plans. Section 468B.395(7), which mentions annual review and revision of the "interagency response plan," suggests that drafters considered NIIMS applicable. Id. § 468B.395(7).
55. Id. § 468B.495(1).
56. Id. § 468B.500(1).
57. Id. § 468B.500(2).
58. Id. § 468B.500(3).
59. Id.
60. Id. § 468B.500(4). The statute envisions coordinating not only oil spill response procedures, but also information systems, damage assessment, and cost recovery programs. Id.
4. Washington

The Washington legislature has announced that the state has an obligation to assure its citizens that the state's waters are protected from oil spills. Additionally, the legislature has found that preventing spills is more cost-effective than cleaning them up when all of the costs associated with spill response are considered. The state has therefore granted broad powers of regulation to the Washington State Department of Ecology in order to enforce a comprehensive spill prevention and response program.

The Director of the Department of Ecology is responsible for spill response. The director has primary authority in the event of an oil spill, consistent with the statewide master oil and hazardous substance spill prevention and contingency plan adopted pursuant to statute. The director also has authority under applicable contingency plans prepared pursuant to the Vessel Oil Spill Prevention and Response Act.

The Department of Ecology is required to prepare and annually update a statewide master oil and hazardous substance spill prevention and contingency plan. The Department must consult with groups including the United States Coast Guard, state and local agencies, the oil transportation industry, and response contractors. The Office of Marine Safety has the primary responsibility for evaluating pre-

61. Wash. Rev. Code Ann. § 90.56.005(1) (West 1992). The legislature noted: "Marine environments are a source of natural beauty, recreation, and economic livelihood for many residents of this state." Id. Due to the importance of these interests, the legislature found "that prevention is the best method to protect the unique and special marine environments in this state." Id. § 90.56.005(2).
62. Id.
63. Id. § 90.56.005(3)(f).
64. Id. § 90.56.020 (defining prevention and response authority in the state).
65. Id. § 90.56.060 (detailing the requirements for the annual plan required of the Department).
66. Id. § 90.56.020. The Vessel Oil Spill Prevention and Response Act was enacted in 1991 and amended in 1992. Id. §§ 88.46.010-88.46.927.
67. Id. § 90.56.060(1).
68. Id.
69. Id. § 43.211.010 (creating the Office of Marine Safety for the purpose of providing state government with a focus on marine transportation and serving the people in the state).
vention\textsuperscript{70} and contingency plans\textsuperscript{71} for covered vessels in Washington.

B. Requirements to Ship Oil

1. Alaska

A person wishing to ship oil in Alaska must comply with the state's oil discharge prevention and contingency plan requirements, oil spill response requirements, and financial responsibility requirements.\textsuperscript{72}

a) Prevention and Contingency Plan Requirements

A party may not operate a tank vessel or an oil barge in Alaskan waters unless an oil discharge prevention and contingency plan for the tank vessel or barge has been approved by the Department, and the party is in compliance with that plan.\textsuperscript{73} The Alaska Department of Environmental Conservation (ADEC) is the only state agency with the power to approve, modify, or revoke a contingency plan.\textsuperscript{74}

Failure of the holder of an approved contingency plan to comply with the plan, to have access to the quality or quantity of resources identified in the plan, or to respond with those resources within the shortest time possible in the event of a spill, is a violation.\textsuperscript{75} If the holder of an approved contingency plan fails to respond to and conduct cleanup operations of an unpermitted discharge of crude oil with the quality and quantity of resources identified in the plan and in a manner required under the plan, the holder is strictly liable, jointly and severally with any other responsible person, for civil penalties assessed against any other person for that discharge.\textsuperscript{76}

\textsuperscript{70} Id. § 88.46.040(1) (requiring submission of oil spill prevention plans by the owner or operator of each tank vessel).

\textsuperscript{71} Id. § 88.46.060(1) (requiring each tank vessel to have an oil spill contingency plan).

\textsuperscript{72} See discussion infra text accompanying notes 73-94.

\textsuperscript{73} ALASKA STAT. § 46.04.030(c) (1991) (exempting a tank vessel or oil barge that is conducting, or is available only for conducting, oil discharge response operations if that vessel has prior Department approval).

\textsuperscript{74} Id. § 46.04.030(h).

\textsuperscript{75} Id. § 46.04.030(g) (permitting assessment of violations pursuant to ALASKA STAT. §§ 46.03.760(a), 46.03.765, 46.03.790, and any other applicable law).

\textsuperscript{76} Id.
b) *Oil Spill Response Requirements*

With limited exceptions,^77^ the holder of an approved contingency plan is required to have on hand all of the resources identified in the plan.^78^ Alaska has also enacted response planning standards.^79^ For tank vessels or oil barges having a cargo volume of less than 500,000 barrels, the plan holder shall maintain in the region of its operation, at a minimum, equipment, personnel, and other resources sufficient to contain or control, and clean up, a 50,000-barrel oil discharge within seventy-two hours.^80^ For tank vessels or oil barges having a cargo volume of 500,000 barrels or more, the plan-holder is required to maintain in the region of its operation, at a minimum, equipment, personnel, and other resources sufficient to contain or control, and clean up, a 300,000-barrel discharge within seventy-two hours.^81^ In addition to the minimum planning standards, the plan-holder must demonstrate that equipment, personnel, and other resources maintained outside the plan-holder’s area of operation are accessible to the plan-holder and will be deployed and operating at the discharge site within seventy-two hours.^82^ These planning standards do not necessarily equal standards that must be met by the holder of a contingency plan.^83^

c) *Financial Responsibility*

A party may not operate a tank vessel or an oil barge in Alaskan waters unless it has submitted, and the Department

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^77^ See id. § 46.04.030(m) (allowing the Department to consider evidence of oil discharge prevention measures such as double bottoms on vessels or barges, secondary containment systems, enhanced vessel traffic systems, or enhanced crew or staffing levels in approving a contingency plan required under this section). Additionally, § 46.04.030(n) allows the Department to except contingency plan requirements for vessels intended for spill response use. *Id.* § 46.04.030(n).

^78^ *Id.* § 46.04.030(k).

^79^ *Id.*

^80^ *Id.* § 46.04.030(k)(3)(a).

^81^ *Id.* § 46.04.030(k)(3)(b).

^82^ *Id.* § 46.04.030(k)(3)(c).

^83^ *Id.* § 46.04.030(l) (providing that failure to remove a discharge of oil within the planning time standard does not constitute failure to comply with a contingency plan for the purpose of imposing administrative, civil, or criminal penalties under this section or any other law).
has approved, proof of financial responsibility to respond for money damages.\textsuperscript{84} Financial responsibility may be proven by self-insurance, insurance, proof of surety, guarantee, letter of credit approved by the Department, or other proof of financial responsibility approved by the Department.\textsuperscript{85} The party seeking approval of financial responsibility and any insurer, surety, guarantor, or person furnishing an approved letter of credit must also appoint an agent for service of process in the state.\textsuperscript{86}

For a tank vessel or barge carrying crude oil, the proof of financial responsibility required is $300 per "gross ton" per incident for each barrel of storage capacity, or $100,000,000, whichever is greater.\textsuperscript{87} For a tank vessel or barge carrying non-crude oil, proof of financial responsibility required is $100 per incident for each barrel of storage capacity, or $1,000,000, whichever is greater, subject to a maximum of $35,000,000.\textsuperscript{88}

Acceptance of proof of financial responsibility expires annually from date of issuance for self-insurance,\textsuperscript{89} on the effective date of any change,\textsuperscript{90} or on the expiration or cancellation\textsuperscript{91} of a surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility.\textsuperscript{92} Further, a holder of a certificate of financial responsibility must notify the Department of any changes in the status of any surety bond, guarantee, insurance agreement, letter of credit, or other proof of financial responsibility at least thirty days before the effective date of such charge.\textsuperscript{93}

Consistent with contingency planning requirements, vessels conducting only oil spill response operations or available only for such operations are exempt from the financial re-

\textsuperscript{84} Id. § 46.04.040(c).
\textsuperscript{85} Id. § 46.04.040(e).
\textsuperscript{86} Id. (granting, with limited exceptions, jurisdiction to state courts for actions brought against a party identified in the certificate of financial responsibility).
\textsuperscript{87} Id. § 46.04.040(c)(1).
\textsuperscript{88} Id. § 46.04.040(c)(2).
\textsuperscript{89} Id. § 46.04.040(f)(1).
\textsuperscript{90} Id. § 46.04.040(f)(2).
\textsuperscript{91} Id. § 46.04.040(f)(3).
\textsuperscript{92} Id.
\textsuperscript{93} Id. § 46.04.040(g) (requiring the holder of the certificate to also apply to the Department for renewal of its certificate within 30 days of the certificate's expiration).
responsibility requirements, subject to approval of an application for exemption submitted to the Department.\textsuperscript{94}

2. California

California has the most comprehensive and detailed laws on the West Coast regulating the use of oil-carrying vessels.\textsuperscript{95} A party wishing to ship oil in California must comply with the state's vessel requirements, oil spill contingency plan requirements, and financial responsibility requirements.\textsuperscript{96}

a) Vessel Requirements

California has adopted various federal statutes and regulations concerning vessel safety.\textsuperscript{97} The California legislature has also directed the administrator to adopt regulations that require all tankers to use tugboats at the administrator's discretion.\textsuperscript{98} The administrator must also establish regulations requiring that a tanker in marine waters has at all times at least one person on the bridge who is able to communicate fluently and effectively both in English and in the language of the master of the vessel.\textsuperscript{99} Finally, the State has passed legislation that prohibits the docking, loading, and unloading of vessels that are not in compliance with the double-hull requirement schedule of the Oil Pollution Act of 1990.\textsuperscript{100}

b) Contingency Plan Requirement

The Governor is required to establish a state oil spill contingency plan pursuant to the California Emergency Services Act.\textsuperscript{101} The Act requires the Governor to amend that plan by adding a marine oil spill contingency planning section, which provides for the "best achievable protection" of the coast and marine waterways by January 1, 1993.\textsuperscript{102}

\textsuperscript{94} Id. § 46.04.040(m).
\textsuperscript{95} See John D. Edgcomb, Responding to an Oil Spill in California: The Impact of OPA 1990 and OSPRA, 5 U.S.F. MAR. L. J., Spring 1993, at 391-422.
\textsuperscript{96} CAL. GOV'T. CODE § 8670 (West 1992 & Supp. 1994). See also supra text accompanying notes 97-115.
\textsuperscript{97} See id. § 8670.16 (West 1992).
\textsuperscript{98} Id. § 8670.17.
\textsuperscript{99} Id.
\textsuperscript{100} Id. § 8670.22. For additional information on the double-hull requirement and state law requirements, see Oil Pollution Act, supra note 4, § 4115.
\textsuperscript{101} CAL. GOV'T. CODE § 8574.7 (West 1992).
\textsuperscript{102} Id. § 8574.7(e). For a definition of "best achievable protection," see id. § 8670.3(c) (West 1992 & Supp. 1994).
Article 5 of the Act details the specific requirements for all vessel and marine facility operators for a required contingency plan in the event of an oil spill. Except when a vessel or barge enters California waters due to imminent danger to the vessel or the lives of the crew, each vessel or barge entering California waters must meet the regulations and guidelines promulgated under this section. The Administrator was required to have all guidelines and regulations promulgated by December 31, 1991. Each operator is required to maintain a state of readiness to respond to an oil spill consistent with its oil spill contingency plan.

c) Financial Responsibility

A party shipping oil in California waters must meet the state's financial responsibility requirements. No vessel may be used to transport oil across marine waters of the State of California unless the operator has obtained a certificate of financial responsibility issued by the administrator. For a certificate for a vessel, or for all the oil contained within the vessel, the applicant must demonstrate access to at least $500,000,000 for any damages that may arise during the term of the certificate.

With respect to marine facilities, the applicant must demonstrate the financial ability to pay for damages that might arise during a reasonable worst-case spill into marine waters. The Administrator is provided with certain criteria to consider in issuing a certificate.

103. Id. § 8670.28 (West 1992 & Supp. 1994) (establishing minimum requirements for contingency plans).
104. Id. § 8670.34 (West 1992).
105. Id. § 8670.28 (West 1993).
106. Id. § 8670.28(d). As of November 1993, it does not appear that these guidelines have yet been promulgated.
107. Id. § 8670.28. (West 1992).
108. See id. § 8670.37.51-.57.
109. Id. § 8670.37.51.
110. Id. § 8670.37.53(a) (automatically raising the amount of financial responsibility to $750,000,000 on July 1, 1995, and to $1,000,000,000 on January 1, 2000).
111. Id. § 8670.37.53(b).
112. Id. The criteria the administrator may consider in determining whether an operator has the financial responsibility to pay for a worst-case oil spill are: (1) the amount of oil that potentially could be spilled into marine waters from the facility; (2) the cost of cleaning up spilled oil; (3) the frequency of
3. Oregon

A party who wants to ship oil in Oregon must comply with the state's contingency plan requirements and financial responsibility requirements.\(^{116}\)

\textbf{a) Contingency Plan Requirements}

Unless an oil spill prevention and response plan has been approved by the Oregon Department of Environmental Quality,\(^{117}\) no person shall cause or permit the operation of a covered vessel within the navigable waters of the state.\(^{118}\) Any contingency plan approved under this section must be renewed at least once every five years.\(^{119}\)

The Environmental Quality Commission was charged with adopting rules for the preparation of contingency plans by July 1, 1992.\(^{120}\) These rules must be coordinated with \hspace{1cm}

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\(^{113}\) Id. § 8670.37.55.

\(^{114}\) Id. § 8670.37.55(b).

\(^{115}\) Id. § 8670.37.56.

\(^{116}\) See discussion \textit{infra} text accompanying notes 117-155.

\(^{117}\) The Department of Environmental Quality is the controlling Department in Oregon that ensures adequate state capability to respond to an oil spill and compliance with federal regulation. \textit{See supra} part A3.

\(^{118}\) OR. REV. STAT. § 468B.345(1) (1991). \textit{See e.g., id.} § 468B.300(5) (defining covered vessel as a tank vessel, cargo vessel, or a passenger vessel). If a violation is charged, it is not a valid defense to claim a good-faith belief that the person charged believed a current contingency plan had been approved by the Department. \textit{Id} § 468B.345(2).

\(^{119}\) Id. § 468B.345(3).

\(^{120}\) Id. § 468B.350(1). It is not clear whether, as of November 1993, these rules have in fact been promulgated.
similar rules adopted by the State of Washington and the United States Coast Guard.

To the maximum extent practicable, the contingency plans are to be designed, in terms of personnel, materials, and equipment, to remove oil and minimize damage to the environment resulting from a maximum probable spill and a worst-case spill. The plan must show how it relates to and is coordinated with other response plans required by Oregon, provide procedures for early detection of a spill, demonstrate access to cleanup personnel and equipment, and identify pre-positioned personnel assigned to direct and implement the plan.

Contingency plans for covered tank vessels must be submitted to the Department within twelve months after the commission adopts contingency planning rules. For a covered vessel, the plan must be submitted by the owner or operator of the vessel, the owner or operator of the facility at which the vessel will be loading or unloading its cargo, or a qualified oil spill response cooperative in which the tank vessel owner or operator is a participating member. Further, a person that has contracted with a covered vessel to provide oil spill response cleanup services may submit a contingency plan on behalf of the vessels with which it has contracted.

The requirement of submitting a plan may be satisfied for a covered vessel by submission of proof of assessment participation by the vessel in a maritime association. Oregon

121. Id.
122. Id. § 468B.350(2).
123. Id. § 468B.350(2)(b). See also, e.g., id. § 468B.300(13) (defining “maximum probable spill” as the maximum probable spill for a vessel operating in the navigable waters of the state considering the history of spills of vessels of the same class operating on the west coast of the United States); id. § 468B.300(28) (defining “worst-case spill” as a spill of the entire cargo and fuel of the tank vessel complicated by adverse weather conditions).
124. Id. § 468B.350(2)(d).
125. Id. § 468B.350(2)(e).
126. Id. §§ 468B.350(2)(k), (l).
127. Id. § 468B.355(1)(d).
128. Id. § 468B.355(3)(a).
129. Id. § 468B.355(3)(b).
130. Id. § 468B.355(3)(c).
131. Id. § 468B.355(6).
132. Id. §§ 468B.355(7), (9). "Maritime association" means an association or cooperative of marine terminals, facilities, vessel owners, vessel operators, vessel agents, or other marine industry groups that provides oil spill response planning and spill-related communications services within the state. Id.
may accept a contingency plan prepared for a federal agency or an adjacent state if it meets certain minimum standards. 133

After reviewing the proposed contingency plan pursuant to several factors, the Department will approve a contingency plan. 134 The holder of a plan is required to notify the Department of any significant change affecting the plan. 135 In the event of an oil spill, the holder of an approved plan, after notice to the Department, may allocate resources identified in the plan to assist another plan-holder in its response to an oil spill. 136

Upon approval of the contingency plan, the Department issues a certificate of approval to a plan-holder. 137 Approval of a contingency plan by the Department does not constitute

§ 468B.300(12). Note that participation in a maritime association does not provide a defense to liability, and does not excuse members from complying with portions of the contingency plan that require vessel-specific oil response equipment, training, or capabilities for that vessel. Id. § 468B.355(14).

133. Id. § 468B.355(8). The minimum standards are those pursuant to § 468B.345 (requiring approval by Department of Environmental Quality), § 468B.350 (detailing specific requirements for plans), § 468B.355 (scheduling dates for submission of plans), and § 468B.360 (requiring review of contingency plan according to certain criteria).

134. Id. §§ 468B.360, 468B.365. The factors that the Department of Environmental Quality must consider include:

(1) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call-down lists, response time and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(2) The nature and amount of vessel traffic within the area covered by the plan;

(3) The volume and type of oil being transported within the area covered by the plan;

(4) The existence of navigational hazards within the area covered by the plan;

(5) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(6) The sensitivity of fisheries and wildlife and other natural resources within the area covered by the plan;

(7) Relevant information on previous spills contained in on-scene coordinator reports covered by the plan;

(8) The extent to which reasonable, cost-effective measures to reduce the likelihood that a spill will occur have been incorporated into the plan.

Id. § 468B.360.

135. Id. § 468B.365(2).

136. Id. § 468B.365(3).

137. Id. § 468B.365(9).
an assurance of the adequacy of the plan or constitute a defense to liability imposed under Oregon law.\textsuperscript{138} Although there are many uncertainties inherent in the creation of a contingency plan, the question of how far a party may vary an actual response from the approved plan has yet to be addressed.

The Department is also required to adopt procedures to determine the adequacy of approved contingency plans.\textsuperscript{139} These rules may require random drills\textsuperscript{140} and reports on the drills by plan-holders.\textsuperscript{141} Failure of a plan-holder to have access to,\textsuperscript{142} or respond to and clean up a spill\textsuperscript{143} with, "the quality and quantity of resources identified in the plan" may lead to revocation of the Department's approval.\textsuperscript{144}

\textbf{b) Financial Responsibility}

The Oregon Legislative Assembly has found "that oil spills, hazardous material spills and other forms of incremental pollution present serious danger to the fragile marine environment of the state."\textsuperscript{145} To ensure cleanup of dangerous pollution, Oregon established financial assurance requirements for ships that transport oil and other hazardous material in state waters.\textsuperscript{146} Financial assurance may be established by several methods, including evidence of insurance, surety bond, qualification of self-insurance, or other evidence of financial assurance approved by the commission.\textsuperscript{147}

Any ship over 300 gross tons that transports oil in bulk as cargo, using any port or waters in Oregon, must provide evidence of financial assurance to the Department.\textsuperscript{148} The

\begin{itemize}
\item \textsuperscript{138} \textit{Id.} \S\ 468B.365(10).
\item \textsuperscript{139} \textit{Id.} \S\ 468B.370(1).
\item \textsuperscript{140} \textit{Id.} \S\ 468B.370(1)(b).
\item \textsuperscript{141} \textit{Id.} \S\ 468B.370(1)(c).
\item \textsuperscript{142} \textit{Id.} \S\ 468B.385(3).
\item \textsuperscript{143} \textit{Id.} \S\ 468B.385(4).
\item \textsuperscript{144} \textit{Id.} \S\ 468B.385 (detailing circumstances when the Department may revoke or modify its approval of a contingency plan; revocation or modification occurs only after notice and opportunity for a hearing).
\item \textsuperscript{145} \textit{Id.} \S\ 468B.475. The legislature proclaimed that "pollution of the waters of the state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water . . . ." \textit{Id.} \S\ 468B.015.
\item \textsuperscript{146} \textit{Id.} \S\ 468B.475.
\item \textsuperscript{147} \textit{Id.} \S\ 468B.485(1).
\item \textsuperscript{148} \textit{Id.} \S\ 468B.480(1).
\end{itemize}
minimum amount is $1 million or $150 per gross ton of the
ship, whichever is greater.\(^{149}\) The financial assurance under
this section is designed to cover liability to the State of Ore-
gon for the actual cost for removal of spills of oil, for civil pen-
alties and fines imposed in connection with the spill of oil,
and for natural resource damage.\(^{150}\)

Except for a barge that does not carry oil as cargo or fuel,
the owner of any vessel of over 300 gross tons is required to
have proof of financial responsibility at different levels.\(^{151}\)
For a tank vessel over 300 gross tons, proof of financial re-
sponsibility is fixed at $1,200 per gross ton, or $2 million for
vessels of 3,000 gross tons or less, whichever is greater.\(^{152}\)

In order to obtain approval of a contingency plan, a ves-
sel must demonstrate compliance with the financial responsi-
bility requirements.\(^{153}\) To check compliance, the Department
is instructed to enter into an agreement with the United
States Coast Guard to receive notification of noncompliance
with these financial responsibility provisions.\(^{154}\) Further, the
State imposes a duty on marine pilots to report to the Depart-
ment of Environmental Quality any ship that does not pro-
vide proof of financial assurance.\(^{155}\)

4. Washington

A party wishing to ship oil in Washington must comply
with the state's oil discharge prevention and contingency
plan requirements, and with its financial responsibility re-
quirements.\(^{156}\) Unlike Alaska, Washington has no laws re-
quiring vessel owners to meet oil spill response requirements.

\(^{149}\) Id.

\(^{150}\) Id. § 468B.480(2).

\(^{151}\) Id. § 468B.390(3) (detailing the breakdown of financial responsibility
under the Federal Oil Pollution Act, supra note 4).

\(^{152}\) Id. § 468B.390(3)(a)(A). If a vessel is over 3,000 gross tons, the financial
responsibility is fixed at $1,200 per gross ton or $10 million, whichever is
greater. Id. § 468B.390(3)(a)(b). For any other covered vessel over 300 gross
tons, the financial responsibility is fixed at $600 per gross ton or $500,000,
whichever is greater. Id. § 468B.390(3)(b).

\(^{153}\) Id. § 468B.365(1)(a).

\(^{154}\) Id. § 468B.390(4).

\(^{155}\) Id. § 468B.490.

\(^{156}\) See discussion infra text accompanying notes 157-177.
a) Prevention and Contingency Plan Requirements

The owner or operator for each tank vessel operating in Washington state waters is required to submit to, and have approved by the Office of Marine Safety,\(^{157}\) an oil spill prevention plan.\(^{158}\) The spill prevention plan may be consolidated with mandatory spill contingency plans also required by the Washington Code.\(^{159}\) The Office of Marine Safety may accept plans prepared to comply with the requirements of other state and federal laws.\(^{160}\) The prevention plan must meet several defined requirements.\(^{161}\) The office will approve prevention plans only if they provide for the "best achievable protection"\(^{162}\) from damages that would result from dis-

\(157\) The Office of Marine Safety is the Washington state agency in charge of enforcing oil shipping regulations, created pursuant to WASH. REV. CODE ANN. § 43.211.010 (West Supp. 1992). The head of the Office is the Administrator of Marine Safety, appointed by the governor. Id. § 43.211.020.

\(158\) Id. § 88.46.040(1).

\(159\) Id. § 88.46.060(2)-(3) (requiring oil spill contingency plans for covered vessels).

\(160\) Id. § 88.46.040(1).

\(161\) Id. § 88.46.040(2). A prevention plan must perform the following:

(a) Establish compliance with the federal oil pollution act of 1990 and state and federal financial responsibility requirements, if applicable;

(b) State all discharges of oil of more than twenty-five barrels from the vessel within the prior five years and what measures have been taken to prevent a reoccurrence;

(c) Describe all accidents, collisions, groundings, and near miss incidents in which the vessel has been involved in the prior five years, analyze the causes, and state the measures that have been taken to prevent a reoccurrence;

(d) Describe the vessel operations with respect to staffing standards;

(e) Describe the vessel inspection program carried out by the owner or operator of the vessel;

(f) Describe the training given to vessel crews with respect to spill prevention;

(g) Establish compliance with federal drug and alcohol programs;

(h) Describe all spill prevention technology that has been incorporated into the vessel;

(i) Describe the procedures used by the vessel owner or operator to ensure English language proficiency of at least one bridge officer while on duty in the waters in the state;

(j) Describe relevant prevention measures incorporated in any applicable regional marine spill safety plan that have not been adopted and the reasons for that decision; and

(k) Include any other information reasonably necessary to carry out the purposes of this chapter required by rules adopted by the office.

\(162\) Id. § 88.46.040(2). The section defines "best achievable protection" as the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and opera-
charge of oil into Washington waters.\textsuperscript{163} Prevention plan approval is valid for five years.\textsuperscript{164} The statute clearly states that plan approval does not constitute an express assurance regarding the adequacy of the plan, nor does it constitute a defense to liability imposed under state law.\textsuperscript{165}

The owner or operator of each tank vessel operating in Washington waters is required to submit a contingency plan for the containment and cleanup of oil spills from covered vessels, which has been approved by the Office of Marine Safety.\textsuperscript{166} The office requires contingency plans to meet minimum standards.\textsuperscript{167} The law also clearly defines the minimum measures that provide the greatest protection achievable. \emph{Id.} Determination of this status shall be guided by the critical need to protect the state's natural resources and waters, while considering: (a) additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures. \emph{Id.}

\begin{itemize}
\item 163. \emph{Id.} § 88.46.040(3).
\item 164. \emph{Id.} § 88.46.040(5).
\item 165. \emph{Id.} § 88.46.040(7).
\item 166. \emph{Id.} § 88.46.060(1) (requiring a contingency plan and also granting authority to the office to adopt rules and periodically revise standards for the preparation of contingency plans).
\item 167. \emph{Id.} The contingency plan is required to meet the following standards:
\begin{itemize}
\item (a) Include full details of the method of response to spills of various sizes from any vessel which is covered by the plan;
\item (b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the office, removing oil and minimizing any damage to the environment resulting from a worst case spill;
\item (c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;
\item (d) Provide procedures for early detection of spills and timely notification of such spills to appropriate federal, state, and local authorities under applicable state and federal law;
\item (e) State the number, training preparedness, and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan;
\item (f) Incorporate periodic training and drill programs to evaluate whether personnel and equipment provided under the plan are in a state of operational readiness at all times;
\item (g) Describe important features of the surrounding environment, including fish and wildlife habitat, environmentally and archaeologically sensitive areas, and public facilities. The Departments of ecology, fisheries, wildlife, and natural resources, and the office of archaeology and historic preservation, upon request, shall provide information that they have available to assist in preparing this description. If the office has adopted rules for contingency plans prior to July 1, 1992, the description of archaeologically sensitive areas shall only be required
\end{itemize}
mum factors that the office will consider in reviewing the adequacy of contingency plans submitted under this Title.  

The factors to be considered in reviewing a contingency plan are as follows:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call-down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;
(b) The nature and amount of vessel traffic within the area covered by the plan;
(c) The volume and type of oil being transported within the area covered by the plan;
(d) The existence of navigational hazards within the area covered by the plan;
(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;
(f) The sensitivity of fisheries and wildlife and other natural resources within the area covered by the plan;
(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the director; and

Id. § 88.46.060(5). The factors to be considered in reviewing a contingency plan are as follows:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call-down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;
(b) The nature and amount of vessel traffic within the area covered by the plan;
(c) The volume and type of oil being transported within the area covered by the plan;
(d) The existence of navigational hazards within the area covered by the plan;
(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;
(f) The sensitivity of fisheries and wildlife and other natural resources within the area covered by the plan;
(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the director; and

Id. § 88.46.060(5). The factors to be considered in reviewing a contingency plan are as follows:

(a) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call-down lists, response time, and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;
(b) The nature and amount of vessel traffic within the area covered by the plan;
(c) The volume and type of oil being transported within the area covered by the plan;
(d) The existence of navigational hazards within the area covered by the plan;
(e) The history and circumstances surrounding prior spills of oil within the area covered by the plan;
(f) The sensitivity of fisheries and wildlife and other natural resources within the area covered by the plan;
(g) Relevant information on previous spills contained in on-scene coordinator reports prepared by the director; and
Like compliance with prevention plan requirements, compliance with contingency plan requirements does not constitute a defense to liability.\textsuperscript{169}

The provisions of prevention and contingency plans approved by the office pursuant to this chapter are legally binding on those persons submitting them to the office.\textsuperscript{170}

\textbf{b) Financial Responsibility}

A party may not operate a tank vessel that carries oil as cargo in bulk, or any inland barge that carries oil as cargo in bulk, within the state waters without showing proof of financial responsibility.\textsuperscript{171} Proof of financial responsibility must be filed with the Office of Marine Safety at least twenty-four hours before entry into state waters, unless the vessel has filed documentation with the federal government that at least meets the state standards.\textsuperscript{172} Financial responsibility may be established by evidence of insurance, surety bonds, self-insurance, or other evidence of financial responsibility approved by the Office of Marine Safety.\textsuperscript{173} In the alternative, an owner may file with the office a certificate evidencing compliance with another state's requirements that are at least as strict as Washington's.\textsuperscript{174}

A tank vessel that carries oil as cargo in bulk must demonstrate financial responsibility to pay at least five hundred million dollars.\textsuperscript{176} An inland barge must demonstrate financial responsibility to pay at least the greater of one million dollars or one hundred fifty dollars per gross ton of the vessel.\textsuperscript{176} The office may establish a lesser standard of financial responsibility for barges of less than three hundred gross tons.\textsuperscript{177}

\textsuperscript{169} Id. § 88.46.060(10).
\textsuperscript{170} Id. § 88.46.070 (extending the legally binding effect to a plan-holder's successors, assigns, agents, and employees).
\textsuperscript{171} Id. § 88.40.020.
\textsuperscript{172} Id. § 88.40.030.
\textsuperscript{173} Id.
\textsuperscript{174} Id.
\textsuperscript{175} Id. § 88.40.020(2)(a).
\textsuperscript{176} Id. § 88.40.020(1) (West Supp. 1992).
\textsuperscript{177} Id. § 88.40.020(2)(b).
C. Liability for Spilling Oil

1. Alaska

Title 46, Chapter 4 of the Alaska Statutes addresses "Oil and Hazardous Substance Pollution Control" and "Hazardous Substance Release Control." A person causing or permitting the discharge of oil in state waters or in Washington is required to contain and clean up the discharge immediately. Further, the State will promptly seek reimbursement for any expenses it incurs in the cleaning up or containing of discharged oil. Containment and cleanup of discharged oil must be carried out in a manner approved by the Alaska Department of Environmental Conservation (ADEC).

If the ADEC determines that the containment and cleanup activities of the spiller are not adequate, ADEC may direct any person engaged in cleanup to cease and may undertake activities itself through contract, through its own resources, or both. To facilitate coordinated and effective oil discharge prevention and response activities in the state, ADEC is empowered to enter into agreements with the United States Coast Guard and/or the Environmental Protection Agency.

The Alaska oil pollution laws provide criminal penalties, civil penalties, and civil liability for failing to...
class C felony if the oil discharge is 10,000 barrels or more, and a class A misdemean or if the oil discharge is less than 10,000 barrels. *Id.* § 46.03.790.

187. *Id.* § 46.03.758 (explaining policies of the legislature for imposition of penalties). Section 46.03.758 establishes a schedule of penalties for violations, establishing maximum fines as follows: (A) $10 per gallon of oil that enters an anadromous stream or other freshwater environment with significant aquatic resources; (B) $2.50 per gallon of oil that enters an estuarine, intertidal, or confined saltwater environment; and (C) $1 per gallon of water that enters an unconfined saltwater environment, public land, or freshwater environment without significant aquatic resources. *Id.* § 46.03.758. The schedule is designed to vary “according to the toxicity, degradability and dispersal characteristics of the oil,” and “the sensitivity and productivity of the receiving environment.” *Id.* § 46.03.758(d). In addition to the person causing the discharge, if over 18,000 gallons of oil are unlawfully discharged, additional persons listed under § 46.03.758(e)(1)-(3) are jointly and severally liable for the penalties fixed in § 46.03.758(b). *Id.* § 46.03.758(e). The court may deduct from the penalties amounts spent in the cleanup of oil. *Id.* § 46.03.758(f). The penalty may also be decreased if the person can demonstrate by a preponderance of the evidence “that mitigating circumstances relating to the effects of the discharge would make imposition of the full penalty inappropriate.” *Id.* § 46.03.758(g). Additionally, the person may be excused from liability if it is demonstrated by a preponderance of the evidence that the discharge occurred solely as a result of: (1) an act of God; (2) an act of a third person with intent to cause a discharge, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1)-(3) of this section; (3) a negligent or intentional act of this state or the United States; or (4) an act of war. *Id.* § 46.03.758(h). Section 46.03.759 provides similar penalties for discharges of crude oil exceeding 18,000 gallons, and limits penalties at $500,000,000, consisting of: (1) $8 per gallon of crude oil discharged for the first 420,000 gallons discharged; and (2) $12.50 per gallon of crude oil discharged for amounts discharged in excess of 420,000 gallons. *Id.* § 46.03.759(a). Subject to the $500,000,000 maximum, four times the penalty is assessed if: (1) the discharge was caused by gross negligence or an intentional act; (2) reasonable measures were not taken to contain or clean the oil; or (3) an approved oil discharge prevention and contingency plan was not complied with. *Id.* § 46.03.759(c). The court deducts the number of gallons removed by the defendant within the first 36 hours after the discharge. *Id.* § 46.03.759(b).

188. *Id.* §§ 46.03.760, 46.03.780, 46.03.822. Most violations cause the discharger to be liable to the state for between $500 and $100,000, limited to $5,000 for each successive day after the initial violation. *Id.* § 46.03.760(a). The court’s assessment must reflect: (1) compensation for adverse environmental effects; (2) costs incurred by the state in detection, investigation, and correction of the violation; and (3) economic savings realized by the discharger by violating the code section. *Id.* § 46.03.760(a). All penalties are compensatory, except those awarded under § 46.03.760(f) when the court deems it necessary to impose punitive damages in order to deter future noncompliance. *Id.* § 46.03.760(f). A person who violates §§ 46.04 or 46.09 and “thereby causes the death of fish, animals, or vegetation or otherwise injures or degrades the environment of the state” is liable to the state for damages equal to the amount required to restore such damaged conditions. *Id.* § 46.03.780. Section 46.03.822 provides strict liability for the release of hazardous materials by certain persons, including the owner of a vessel that discharges such materials. *Id.* § 46.03.822(a). A person may be relieved from liability, however, for various
comply with the state’s oil pollution laws. Vessels that discharge oil into Alaskan waters are also subject to arrest.\textsuperscript{189} Additionally, the state courts are granted the power to enjoin any violations of the oil pollution statutes.\textsuperscript{190}

Under the state’s Environmental Conservation Laws,\textsuperscript{191} it is a class A misdemeanor to violate with criminal negligence any provision of the Oil and Hazardous Substance Pollution Control Law\textsuperscript{192} or the Hazardous Substance Release Control Law.\textsuperscript{193} This includes not only causing oil spills, but also failing to meet the requirements of filing prevention and contingency plans\textsuperscript{194}

Civil penalties for discharging oil are established by a statute that permits the state to assess penalties against any oil discharger.\textsuperscript{195} The statute is based on conflicting legislative findings, because the penalties provide an incentive not to discharge oil, but are not meant as punitive damages.\textsuperscript{196} The range of penalties is established by the amount of oil discharge and the location of the discharge.\textsuperscript{197} As an example, a discharge of oil into an estuarine, intertidal or confined saltwater environment fixes a penalty of $2.50 per gallon discharged.\textsuperscript{198} This fine is increased if crude oil is discharged.\textsuperscript{199} Additionally, a “discharger” is defined as the owner of the vessel, the vessel operator, and the oil owner, for spills in excess of 18,000 gallons.\textsuperscript{200}

\footnotesize
\begin{itemize}
  \item reasons detailed in § 46.03.822(b), including a lack of negligent or intentional action. \textit{Id.} § 46.03.822(b).
  \item 189. \textit{Id.} § 46.03.770. A vessel used in violation of §§ 46.03.740 or 46.03.750 may be detained and held as security for payment to the state of damages assessed; if the damages are not paid within 30 days after judgment, the vessel may be sold and the proceeds used to pay the damages. \textit{Id.} § 46.03.770.
  \item 190. \textit{Id.} § 46.03.765. The section provides that temporary relief may be obtained “upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irrepairable harm.” \textit{Id.}
  \item 191. \textit{Id.} § 46.03.
  \item 192. \textit{Id.} § 46.04.
  \item 193. \textit{Id.} §§ 46.09, 46.03.790.
  \item 194. \textit{Id.; see also supra} note 186 for a more detailed discussion of criminal penalties.
  \item 195. \textit{Alaska Stat.} § 46.03.758 (1991).
  \item 196. \textit{Id.} § 46.03.758(a)(3).
  \item 197. \textit{Id.} § 46.03.758; \textit{see also supra} note 187 for a more detailed discussion of civil penalties.
  \item 198. \textit{Alaska Stat.} §§ 46.03.758(b)(A), (B) (1991).
  \item 199. \textit{Id.} § 46.03.759.
  \item 200. \textit{Id.} § 46.03.758.
\end{itemize}
The Alaska oil pollution laws provide civil liability for oil pollution damages caused by a party and liability for oil pollution damages regardless of cause.201 A person who causes a violation of oil pollution laws is liable to the state for damages to the environment, for costs incurred by the state in cleanup, and for economic savings realized by violating the oil pollution laws.202 The liability has a limit of $100,000 for the initial violation,203 with a daily limit of $5000 for each day the violation continues,204 and may not be incurred along with civil penalties.205

The owner and the person having control of oil that is discharged into state waters are jointly and severally liable for damages from the release of oil without regard to fault.206 The amount of damages includes the costs of response, containment, removal, and remedial action incurred by the state, municipality, or village.207 Additionally, liability is not relieved for negligent acts of third parties that cause the spill if the third parties are in privity of contract or employed by the owner of the oil or vessel.208

2. California

California oil spill laws provide criminal liability209 and civil liability210 for violations of the oil spill laws. Any knowing violation211 of a California oil spill law is a misdemeanor

201. Id. §§ 46.03.760, 46.03.822; see also supra note 188 for a more detailed discussion of civil liability.
203. Id.
204. Id.
205. Id. § 46.03.758(i).
206. Id. § 46.03.822.
207. Id.
208. Id. § 46.03.822. Privity of contract is found “if the third party or its agent and the person are parties to a land contract, deed, or other instrument transferring title or possession of the real property on which the facility in question is located.” Id. § 46.03.822(c).
209. See infra text accompanying notes 211-12.
210. See infra text accompanying notes 213-20.
211. The term “knowing” is not defined separately in Chapter 7.4, entitled Oil Spill Response and Contingency Planning. California Penal Code § 7(5) defines “knowingly” as imparting “only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission.” CAL. PENAL CODE § 7(5) (West 1993).
punishable by a fine of not more than $50,000 or by imprisonment in the county jail for not more than one year.\textsuperscript{212}

Any person who intentionally or negligently violates any California oil spill law shall be subjected to a civil penalty of not less than $25,000 or more than $500,000 for each violation.\textsuperscript{213} Additionally, there is an administrative civil penalty not to exceed $100,000 for any negligent or intentional violation of the oil spill laws.\textsuperscript{214}

There are two strict liability statutes for damage due to oil pollution. Both statutes attach liability to any responsible party,\textsuperscript{215} without regard to fault, for any damages caused by the discharge of oil.\textsuperscript{216} One statute grants any injured person a right of recovery against the responsible party.\textsuperscript{217} The other statute grants the state an additional recovery of a penalty assessed in proportion to the amount of oil discharged.\textsuperscript{218}

There is a right of private attorney general actions,\textsuperscript{219} and state courts are granted the power to enjoin any person engaged in an act in violation of the oil spill laws.\textsuperscript{220}

3. Oregon

It is unlawful for oil to spill in Oregon state waters from any ship or any fixed or mobile facility regardless of whether the entry is the result of intentional or negligent conduct.\textsuperscript{221} Further, any party owning oil or having control over oil that enters the waters of the State in violation of Oregon Rev. Stat. section 468B.305 is strictly liable, without regard to

\textsuperscript{212} CAL. GOV'T CODE § 8670.65 (West 1993).
\textsuperscript{213} Id. § 8670.66.
\textsuperscript{214} Id. § 8670.67.
\textsuperscript{215} “Responsible party” is defined as the owner of oil, transporter of oil, person accepting responsibility for oil [agent], vessel owner, or vessel operator. Id. § 8670.3(o)(1)-(3).
\textsuperscript{216} Id. §§ 8670.56.5, 8670.67.5.
\textsuperscript{217} Id. § 8670.56.5.
\textsuperscript{218} Id. § 8670.67.5.
\textsuperscript{219} Id. § 8670.69.
\textsuperscript{220} Id. § 8670.57.
\textsuperscript{221} OR. REV. STAT. § 468B.305(1) (1991). This section is not violated, however, in the following circumstances: (a) the person discharging the oil was authorized to do so pursuant to a permit under section 468B.050; or (b) the oil’s entry was caused by (1) an act of war, sabotage, or God; (2) state or federal negligence; or (3) a third party. Id. § 468B.305(2).
fault, for damages to persons or property caused by such entry.\textsuperscript{222}

In addition to other liability or penalties imposed by law, it is the obligation of any party owning or having control over oil that enters the water to collect and remove the oil immediately.\textsuperscript{223} If it is not feasible to collect and remove the oil, the person must take all practicable actions to contain, treat, and disperse the oil.\textsuperscript{224} Thus, the spiller's first duty is to collect and remove oil. If unsuccessful, the spiller's second duty is to contain, treat, and disperse the oil.

If any party fails to collect, remove, treat, contain, or disperse oil immediately when under obligation,\textsuperscript{225} the Department of Environmental Quality (the Department) is authorized to take necessary action to clean up the spill.\textsuperscript{226} The Department may act itself or through contracts with outside parties.\textsuperscript{227}

The director of the Department is required to track all cleanup expenses incurred under this section.\textsuperscript{228} Any person who fails to fulfill his duty to clean up his spill shall be responsible for any necessary expenses incurred by the State in carrying out actions authorized by this section.\textsuperscript{229} Payment must be made within fifteen days of the assessment, or the director of the Department may request that the Attorney General of the State bring an action to collect money the State has expended on the spiller's behalf.\textsuperscript{230}

The director's authority under this section is limited to actions designed to protect the public interest or public prop-

\begin{thebibliography}{9}
\bibitem{} 222. Id. § 468B.310(1); see also, e.g., id. § 486B.005 (defining "person"); id. § 468B.310(2) (1991) (allowing the person found liable under § 468B.310(1) to maintain an action against another person whose acts or omissions caused the unlawful entry of oil into the waters of the state). Strict liability will be excused for the reasons set forth in § 468B.305(2).
\bibitem{} 223. Id. § 468B.315(1).
\bibitem{} 224. Only Oregon mentions "dispersal" as a way of treating spilled oil. Id. § 468B.315(2).
\bibitem{} 225. According to Oregon revised statute section 468B.305, after unlawfully releasing oil, the responsible party must act immediately to collect, remove, treat, contain, or disperse oil as much as is feasible. Id. § 468B.315.
\bibitem{} 226. Id. § 468B.320 (1991).
\bibitem{} 227. Id.
\bibitem{} 228. Id. § 468B.320(2).
\bibitem{} 229. Id. § 468B.320(4).
\bibitem{} 230. Id. § 468B.330(1). See also, e.g., id. § 468B.330(2). If an appeal is filed, the responsible party has 15 days after the court renders its opinion to pay, if that decision affirms the order to pay. Id.
\end{thebibliography}
OIL POLLUTION LAWS

Thus, the Department is under a duty to act only when this finding has been made.

Any person who willfully or negligently causes or permits the discharge of oil into the waters of the State incurs, in addition to other penalties available under the law, a civil penalty commensurate with the amount of damage incurred. The amount of the penalty is determined by the director of the Department after taking into consideration the gravity of the violation, the previous record of the violator, and other such factors the director may consider appropriate.

Willful or negligent discharge of oil is also a criminal misdemeanor. A person convicted of such a violation may be punished by a fine of not more than $25,000 or imprisonment in the county jail for no more than one year, or both. Each day of the violation constitutes a separate offense.

4. Washington

Except as provided by statute, it is unlawful for the owner or operator of a covered vessel to knowingly and intentionally operate in or on the waters of Washington State without complying with the provisions of the prevention and spill response requirements, financial responsibility requirements, or the Oil Pollution Act of 1990. The statute provides criminal penalties for violations.

231. Id. § 468B.320(3). It is unclear how the Department determines what actions serve the "public interest."

232. Id. § 468B.450(1).

233. Id.

234. Unlawful discharge of oil is criminally punished by Oregon revised statute § 468B.025 (unapproved discharge of oil into marine waters) and § 468B.050 (discharge with permit required). Id. §§ 468B.025, 468B.050. Violations of Oregon revised statute §§ 468B.085, 468B.055, 468B.080, or 468B.305(1) are class A misdemeanors. Id. §§ 468B.085, 468B.080, 468.305(1).

235. Id. § 468B.990(1).

236. Id.

237. See WASH. REV. CODE § 88.46.080 (1992). The limited conditions when a ship, normally required to meet the provisions of the statute, may enter state waters without penalty are as follows:

(a) The covered vessel is not required to have a contingency or prevention plan, or financial responsibility; or

(b) All required plans have been submitted as required and the office is reviewing the plan; or

(c) The U.S. Coast Guard has determined the vessel is in distress.

Id. § 88.46.080(2).

238. Id. §§ 88.46.080(1), (4).

239. Id. § 88.46.080(1).
Washington also provides civil penalties\(^{240}\) in the event that regulated vessels operate in state waters without an approved contingency plan,\(^{241}\) a spill prevention plan,\(^{242}\) and proof of financial responsibility.\(^{243}\) The administrator of the office may assess a civil penalty of up to $100,000 against the vessel owner or operator who violates prevention and contingency plan requirements.\(^{244}\) There are limited exceptions when civil penalties will not be assessed.\(^{245}\)

The liability of anyone who discharges oil into the waters of Washington State is established under the Water Pollution Control Law,\(^{246}\) and the Oil and Hazardous Substance Spill Prevention and Response Law.\(^{247}\) Under the Water Pollution Control Law, any person found guilty of willfully discharging oil into the state water is guilty of a crime and may be imprisoned and fined.\(^{248}\) A person convicted of such a violation may be punished by a fine of not more than $10,000 and costs of prosecution, or imprisoned in the county jail for no more than one year, or both.\(^{249}\) Each day of the violation constitutes a separate offense.\(^{250}\)

The Oil and Hazardous Substance Spill Prevention and Response Law (OHSSPR) imposes penalties on any person who willfully or recklessly discharges oil into the state waters.\(^{251}\) The amount of the penalty under this law is determined by the Director of the Department of Ecology after considering the gravity of the violation, the previous record of

\(^{240}\) Id. § 88.46.090.
\(^{241}\) Id. § 88.46.060.
\(^{242}\) Id. § 88.46.040.
\(^{243}\) Id. § 88.40 (including all rules promulgated pursuant to this section).
\(^{244}\) Id. § 88.46.090(3) (each day that a covered vessel is in violation of this section to be considered a separate violation).
\(^{245}\) Id. § 88.46.090(4). Civil penalties are not imposed if:
(a) A contingency plan, a prevention plan, or financial responsibility is not required for the covered vessel; (b) A contingency plan and prevention plan has been submitted to the office as required by this chapter and rules adopted by the office and the office is reviewing the plan and has not denied approval; or (c) The covered vehicle has entered state waters after the United States coast guard has determined that the vessel is in distress.

Id.

\(^{246}\) Id. § 90.48.
\(^{247}\) Id. § 90.56.
\(^{248}\) Id. § 90.48.140.
\(^{249}\) Id.
\(^{250}\) Id.
\(^{251}\) Id. § 90.56.330.
the violator, and the speed and thoroughness of the collection and removal of oil.\textsuperscript{252} The penalty may be as high as $100,000 for each day the spill poses a risk to the environment.\textsuperscript{253}

If the spiller was negligent, rather than reckless or willful, the maximum liability is $20,000 for each day the spill poses a risk to the environment.\textsuperscript{254}

Under the Oil and Hazardous Substance Spill Prevention and Response Law, any person owning oil or having control of oil is strictly liable for the damage to public and private property caused by an unauthorized discharge of such oil.\textsuperscript{255} Liability is established without regard to fault and without limit on damages.\textsuperscript{256} Unlike the penalties for discharging oil, liability for damages attaches to the owner of the oil and to any person having control over the oil.\textsuperscript{257}

D. State Funding

1. Alaska

The State of Alaska has determined that it is in the best interest of the state and its citizens to provide a readily available fund for the payment of expenses incurred by the ADEC in protecting the state's environment from release of oil or hazardous substances.\textsuperscript{258} To this end, the State Legislature has created the Oil and Hazardous Substance Release Response Fund (OHSFRRF, or "the Fund").\textsuperscript{259}

Financing of the Fund can be realized from several sources, including federal, state, or private money sources;\textsuperscript{260} money received from parties responsible for the containment or cleanup of oil or a hazardous substance at a specific spill;\textsuperscript{261} and money collected for fines, penalties, or dam-

\textsuperscript{252} Id.
\textsuperscript{253} Id.
\textsuperscript{254} Id.
\textsuperscript{255} Id. § 90.56.370.
\textsuperscript{256} Id.
\textsuperscript{257} Id.
\textsuperscript{258} Alaska Stat. § 46.08.005 (West 1991).
\textsuperscript{259} Id. § 46.08.010.
\textsuperscript{260} Id. § 46.08.020.
\textsuperscript{261} Id. § 46.08.020(2) (apparently making a party responsible for the cost of its cleanup effort, and that of the state agencies responding to the spill).
ages\textsuperscript{262} for costs incurred by the state as the result of a release or threatened release of oil or hazardous substance.\textsuperscript{263}

There are several purposes of the Fund. The commissioner of the Department may use money from the Fund to pay the costs of the Department in investigating and evaluating the release or threatened release of oil or hazardous substances, as well as for containing and cleaning up spills that pose a risk to the public or the environment.\textsuperscript{264} The Fund will also pay all costs needed to establish and maintain the "oil and hazardous substance response office."\textsuperscript{265} The costs of conducting training and response exercises for all persons required to have an approved prevention and contingency plan are also paid out of the Fund.\textsuperscript{266}

The commissioner must submit a report to the legislature no later than the tenth day of each regular legislative session reporting expenditures of the Fund.\textsuperscript{267}

The state makes it very clear that it intends to recover from any person who has a release (or is threatening a release) of oil or hazardous material the costs that the state incurs in responding to the incident. The commissioner is required to seek reimbursement promptly for violations of state discharge laws\textsuperscript{268} or federal law for the cost incurred in the cleanup or containment of a spill. Further, at the request of the commissioner, the Attorney General will immediately seek to recover money expended by the Department to clean up or contain any oil or hazardous substance spill.\textsuperscript{269}

\textsuperscript{262} Fines or penalties are recovered under Alaska statute §§ 46.08.005-46.08.080, which generally provide for financing of the fund from a variety of sources, including reimbursement of cleanup fees from the responsible parties. \textit{Id.} §§ 46.08.005-46.08.080.

\textsuperscript{263} \textit{Id.} § 46.08.020(3).

\textsuperscript{264} \textit{Id.} § 46.08.040(1).

\textsuperscript{265} \textit{Id.} § 46.08.040(2). This office was established in the Department to administer the unique needs related to the State's preparation for, and response to, a release or threatened release of oil or hazardous substances. \textit{Id.} § 46.08.100.

\textsuperscript{266} \textit{Id.} § 46.08.040(2)(C).

\textsuperscript{267} \textit{Id.} § 46.08.060 (describing the specifics in the annual spending report).

\textsuperscript{268} \textit{Id.} § 46.03.760(e).

\textsuperscript{269} \textit{Id.} § 46.08.070(b). The money is often expended pursuant to Alaska statute §§ 46.08.005-46.08.080. \textit{Id.} § 46.08.005-46.08.080.
2. California

The Act creates the Oil Spill Prevention and Administration Fund\(^{270}\) and requires every marine terminal operator and each operator of a pipeline transporting oil into the state across or through marine waters to pay an oil spill prevention and administration fee not to exceed $.04 per barrel.\(^{271}\) The Act specifies that the fees be deposited in the Fund and be available, upon appropriation of the legislature, for specific purposes.\(^{272}\) The monies in the Fund are specifically excluded from use in responding to an oil spill.\(^{273}\)

The Act also creates the Oil Spill Response Trust Fund.\(^{274}\) With specific exceptions, the Act requires every operator of a marine terminal,\(^{275}\) operator of a pipeline transporting oil into the state,\(^{276}\) and operator of a refinery\(^{277}\) to pay an oil spill response fee of $.25 per barrel of crude oil received,\(^{278}\) subject to adjustments by the Administrator, as prescribed, for each barrel of petroleum products imported into the state.

With respect to each barrel of petroleum products transported out of the state by a marine terminal operator, or the operator of a pipeline,\(^{279}\) a similar $.25-per-barrel fee is imposed for deposit in the Oil Spill Response Trust Fund.\(^{280}\) The fees required for the Oil Spill Response Trust Fund are collected during any period that the Fund contains less than the "designated amount" of $100,000,000.00.\(^{281}\) The Act appropriates money in the Fund to the Administrator for specified oil cleanup activities.\(^{282}\)

\(^{271}\) Id. § 8670.40.
\(^{272}\) Id. § 8670.40(e).
\(^{273}\) Id. § 8670.40(f).
\(^{274}\) Id. § 8670.46 (West 1992).
\(^{275}\) Id. § 8670.48(a) (West Supp. 1993).
\(^{276}\) Id. § 8670.48(b).
\(^{277}\) Id. § 8670.48(c).
\(^{278}\) Id. §§ 8670.48(a), 8670.48(d).
\(^{279}\) Id. § 8670.48(e).
\(^{280}\) Id. § 8670.48.
\(^{281}\) Id. §§ 8670.48(f), (h).
\(^{282}\) Id. § 8670.48(k). The approved purposes for fund expenditure include:

(1) To provide funds to cover promptly the costs of response, containment, and cleanup of oil spills into marine waters, including damage assessment costs, and wildlife rehabilitation as provided in Section 8670.61.5.
The Administrator may raise the Oil Spill Response Trust Fund fee to a maximum of $1.00 per barrel. The Administrator may raise the fee only after making specific findings associated with significant demands on the Fund. Additionally, the Administrator may spend money from the Fund only after oil has been spilled into marine waters and after specific determinations have been made.

The Act allows the State of California to borrow funds, in accordance with the prescribed requirements, for oil spill response and containment, wildlife rehabilitation, and payment of damages under specified circumstances. The funds borrowed would be special obligations of the state secured solely by the revenues received from specified fees under the bill.

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act also creates an Oil Spill Technical Advisory Committee (OSTA). The OSTA Committee provides public input and independent judgment regarding the actions of the Administrator and the State Interagency Oil Spill Committee. The Committee is composed of nine members who

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(2) To provide emergency loans and to cover response and cleanup costs and other damages suffered by the state or other persons or entities from oil spills into marine waters which cannot otherwise be compensated by responsible parties or the federal government.
(3) To pay claims for damages pursuant to Section 8670.51.
(4) To pay claims for damages, except for damages described in paragraph (7) of subdivision (g) of Section 8670.56.5, pursuant to Section 8670.51.1.
(5) To pay for the arrangement of fifty million dollars ($50,000,000) of financial security as authorized by subdivision (p).
(6) To pay indemnity and related costs and expenses as authorized by Section 8670.56.6.

Id. § 8670.48.5(a) (setting a limit on raising fees to a maximum of increments of $.25 not more frequently than once every three months).
284. Id. §§ 8670.48.5(a)(1), (3).
285. Id. § 8670.49. Note that § 8670.49(a)(1) requires the Administrator to exhaust attempts to force the spilling party or its insurer to begin paying for the cleanup effort, and § 8670.49(a)(2) requires a finding that federal funds must not be available or will not be available within an adequate period of time. Id. § 8670.49(a)(1)-(2).
286. Id. § 8670.53.1 (West 1994).
287. Id. (designating prescribed requirements as lack of funds in the Oil Spill Response Trust Fund and inability of the responsible party to pay).
288. Id. § 8670.53.5.
289. Id. § 8670.54.
290. Id. § 8670.54(a).
are charged with providing recommendations to the Administrator, the State Land Commission, the California Coastal Commission, and the State Interagency Oil Spill Committee on any provision of the Act, including the promulgation of all rules, regulations, guidelines, and policies.292

Article 9 of the Act makes any responsible party strictly liable for all damages incurred by an injured party arising out of, or caused by, the discharge or leaking of oil into marine waters.293 The Act prescribes enforcement procedures and powers, including specific criminal294 and civil295 penalties.

The Act requires responsible parties to fully mitigate adverse effects on wildlife, fisheries, wildlife habitat, and fisheries habitat in accordance with prescribed procedures and requirements.296 The Act requires the Administrator to establish rescue and rehabilitation stations for sea birds, sea otters, and other marine mammals.297

The Act also creates the Environmental Enhancement Fund, requires all penalties to be deposited in the Fund, and makes available, upon appropriation by the legislature, money in the Fund to the Administrator for specified environmental enhancement projects,298 although the money cannot be used for cleanup of an oil spill or for the restoration required after a spill.299

With respect to requirements to enter the California waters, no tanker or barge may use any marine facility in the state unless it complies with all applicable state and federal

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291. Id. (requiring the Governor to appoint five members and requiring the speaker of the Assembly and the Senate Rules Committee to appoint two members each).
292. Id. § 8670.55(a).
293. Id. § 8670.67.5 A “responsible party” for purposes of § 8670.67.5 is defined as one of the following:
   1. The owner or transporter of oil or a person or entity accepting responsibility for the oil.
   2. The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
   3. The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
   4. The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
   5. The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
   6. The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
   7. The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
   8. The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
   9. The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
   10. The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
   11. The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
   12. The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
   13. The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
   14. The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
   15. The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
   16. The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
   17. The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
   18. The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
   19. The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
   20. The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.

294. Id. § 8670.64(a).
295. Id. § 8670.66.
296. Id. § 8656.5 (West 1992).
297. Id. § 8670.37.5.
298. Id. § 8670.70.
299. Id.
laws and regulations governing equipment, personnel, construction, financial responsibility, and operations relating to the prevention of oil spills. Thus, the Act authorizes the Administrator to prohibit an owner or operator of a marine terminal from delivering or accepting oil to or from any tanker or barge where the Administrator makes specified findings in accordance with specified procedures and requirements.

3. Oregon

The Department of Environmental Quality will assess fees on covered vessels to recover the cost of reviewing required plans and conducting inspections, training, and exercises required under the new laws. Fees are determined in the statute for all cargo vessels and all towed tank vessels on a per-trip basis. A “trip” is defined as travel to the appointed destination and return travel to the point of origin within the navigable waters of Oregon. With respect to self-propelled tank vessels, the Environmental Quality Commission will establish by rule a schedule of fees to be assessed under this subsection.

Money collected as fees is deposited in the State Treasury for the Oil Spill Prevention Fund (OSP Fund). The OSP Fund is separate and distinct from the general Fund in the State Treasury. All penalties recovered are paid into the Oil Spillage Control Fund (OSC Fund). Money in the OSC Fund is continuously appropriated to the Department to defray costs incurred in carrying out cleanup activities and the rehabilitation of wildlife affected by a spill. The Legis-

301. Id. § 8754.
303. Id. § 468B.405(2)(a) (setting the fee at $25 per trip).
304. Id. § 468B.405(2)(b) (setting the fee at $28 per trip).
305. Id. § 468B.405(4).
306. Id. § 468B.405(4) (capping the fee for all offshore and onshore facilities and self-propelled tank vessels at $153,600 per year).
307. Id. § 468B.405(5).
308. Id. § 468B.410.
309. Id. § 468B.455(2). The Oil Spillage Control Fund is a revolving account within the General Fund, whose funds are appropriated to the Department of Environmental Quality for costs of cleanup and rehabilitation. Id. § 468B.455(1)-(2).
310. Id. § 468B.455(2).
lative Assembly pronounced that the OSC Fund will not be used for any purpose other than that for which the OSC Fund was created.\textsuperscript{311}

Appropriated continuously to the Department, money in the OSP Fund can be used to pay all costs incurred by the Department to review contingency plans,\textsuperscript{312} conduct training and response exercises, verify existing plan preparedness,\textsuperscript{313} and verify proof of financial responsibility of plan-holders.\textsuperscript{314} The OSP Fund also may be used to pay for the Department's review and revision of the state oil spill response plan, which the Department is required to develop under the law.\textsuperscript{315}

E. \textit{State Oil Spill Response Program (Alaska)}

In order to effectively coordinate special functions related to oil and hazardous substance spill response, Alaska has established in the Department the "oil and hazardous substance response office."\textsuperscript{316} The office shall be prepared to respond promptly to a discharge of oil or a hazardous substance.\textsuperscript{317}

The division of emergency services of the Department of Military and Veteran's Affairs is charged with establishing the Oil and Hazardous Substance Response Corps.\textsuperscript{318} Mobilization of the state's cleanup effort will be achieved through the Corps.\textsuperscript{319} Equipment required for the state response corps to respond to an oil spill shall be maintained in response depots.\textsuperscript{320}

\begin{enumerate}
\item Id. § 468B.455(4).
\item Id. § 468B.410(4)(a)(A).
\item Id. § 468B.410(4)(a)(B).
\item Id. § 468B.410(4)(a)(C).
\item Id. § 468B.410(4)(b).
\item \textit{Alaska Stat.} § 46.08.100 (West 1991).
\item Id. § 46.08.130 (restricting circumstances when the office may respond to those based on the size of the spill, a declaration of emergency under Alaska Statute §§ 46.04.080(a), 46.03.865, 46.26.23, or when the commissioner reasonably believes the spill poses a threat to the public or environment).
\item Id. § 46.08.110(a).
\item Id. § 46.08.110. The Response Corps consists of volunteers who register with the division and agree to be trained in techniques for containment and cleanup of spills. \textit{Id.} § 46.08.110(b). Corps members must also be available on short notice to assist in spill response with responsibilities assigned to the corps under an applicable incident command system. \textit{Id.} § 46.08.120.
\item Id.
\end{enumerate}
III. Analysis

To uncover the problems inherent in working with different state regulatory schemes, imagine the following scenario.

On July 15, the oil tanker T/V Peanut, owned by Italia Oil, hits an unmarked and submerged rock while approaching a harbor near the border of Oregon and California. The Response Corps is to consist of volunteers who register with Oregon and California. Initially the damage appears minimal, and only a light sheen appears on the surface of the water. Reports soon indicate, however, that five cargo tanks have ruptured, releasing nearly a million gallons of crude oil into ocean waters. Additional quantities of hazardous materials routinely carried on board, such as gasoline and hydraulic oils, spill into the aquatic environment. The engine room floods, putting the vessel's pumps out of commission.

The Peanut's captain immediately calls the 1-800 number for the National Response Center (NRC), which in turn notifies the local United States Coast Guard's pre-designated federal on-scene coordinator (FOSC) of the discharge. The captain then telephones Peanut's owner, who will coordinate all further responsibilities on shore while the captain ensures crew safety and contains the spill. The FOSC then telephones the authorities in both Oregon and California. In Oregon, the United States Coast Guard calls the Department of Environmental Quality. In California, the United States Coast Guard calls the state's Administrator and the State Interagency Oil Spill Committee (SI-
The United States Coast Guard calls several other groups within the purview of the Oil Pollution Act. Each responder is governed by a different set of regulations: the federal groups are guided by the Federal Oil Pollution Act of 1990 and the Department of Environmental Quality, California's Administrator, and the SIOSC are each guided by their state's respective laws.

Everyone's first concern is salvaging the damaged vessel in order to avoid spillage of the additional oil cargo still on board and to prevent loss of the vessel itself. After a few hours, the United States Coast Guard gathers lightering vessels and brings them to the tanker to unload the cargo. The ships transfer oil from the hold of the Peanut; after enough oil is unloaded, the tanker is safely moved to a "protected anchorage." The "protected anchorage" should be pre-designated under the applicable area contingency plan according to state requirements.

While towing the vessel to a protected harbor, the next concern is containment of the oil in order to avoid spread of the hazardous fluid to other areas. Because the spill borders two states, it is unclear who is responsible for containment, or even the cleanup, of the oil. The Federal Water Pollu-

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325. See CAL. GOV'T CODE § 8670.4 and accompanying historical notes (West 1992 & Supp 1994) (establishing position of Administrator); id. §§ 8574.9, 8574.10 (establishing the State Interagency Oil Spill Committee).
326. The National Response Unit coordinates private and public responses to a spill, and compiles a list of resources. See Oil Pollution Act, supra note 4, §§ 4201(b). The Coast Guard District Response Group is established in each of the 10 Coast Guard Districts around the country, and is on call 24 hours a day. Id. § 4202(a). The Area Committees are composed of individuals from federal, state, and local agencies who prepare contingency plans covering all navigable waters. See id. § 4201(b). For a discussion of the specific contingency requirements, see Rodriguez & Jaffe, supra note 4, at 23-24.
327. See generally, Oil Pollution Act, supra note 4; see also generally Rodriguez & Jaffe, supra note 4.
328. See supra text accompanying notes 50-56.
329. For a discussion of SIOSC responsibilities, see supra text accompanying notes 45-47.
330. It is interesting to note that parties were similarly confused after the Exxon Valdez incident about whether federal authorities or Exxon officials should effect the cleanup. See generally, Water Pollution, 19 Env't Rep. 2588, 2589 (BNA Apr. 1989); 19 Env't Rep. 2623, 2625 (BNA Apr. 1989); 20 Env't Rep. 1914 (BNA Mar. 1990); 21 Env't Rep. 155 (BNA May 1990); see also Oil Spills 21 Env't Rep. 195 (BNA May 1990). During Congressional hearings on the proposed Oil Pollution Act of 1990, there was also significant controversy over who was responsible for the containment and cleanup process. See Olney, Statement of the American Waterways Operators on Oil Pollution Liability, Cleanup
tion Control Act (FWPCA) placed the duty on the President rather than the discharger to ensure removal of an oil discharge;\textsuperscript{331} in contrast, OPA '90 places the duty of cleanup on the spiller, and the United States Coast Guard oversees operations to ensure performance of the spiller's duty. The President may arrange for removal of the discharge and thus "direct" the spill.\textsuperscript{332} The federal government may also monitor private actors' progress, as long as those parties are the responsible parties for the oil spill cleanup.\textsuperscript{333} Here, the United States FOSC decides to direct cleanup efforts because the spill has occurred in two states, and Italia Oil, the responsible party, has failed to mobilize an adequate response.

Due to the initial uncertainty regarding jurisdiction for oversight of the cleanup operation, several of the ships that have arrived at the scene attempt to contain the oil while others begin to clean it up. Oregon's Department of Environmental Quality engages a cleanup crew, as it knows it bears a certain responsibility for collection of the oil.\textsuperscript{334} Italia Oil's owner takes steps to clean up the oil, and California's administrator\textsuperscript{335} also coordinates state containment efforts. All groups defer, when directed, to the FOSC.\textsuperscript{336} Lacking clear coordination, the different groups begin a haphazard containment of the oil.

and Compensation Legislation, made to the Subcommittee on Water Resources, of the U.S. House Committee on Public Works and Transportation, June 28, 1989 (arguing the discharger should be responsible for cleanup); \textit{see also} Rowland, Testimony on Oil Spill Liability and Compensation Legislation and Oil Response and Clean-up, before the Subcommittee on Water Resources of the House Committee on Public Works and Transportation, June 28, 1989 (arguing that the federal government should oversee the process).


\textsuperscript{333} See \textit{id.} § 1321(c)(1)(B)(ii). The President is authorized to require the Attorney General to secure the assistance of any person necessary, including the owner or operator of the vessel. \textit{Id.} § 1321(e)(1)(A).

\textsuperscript{334} See OR. REV. STAT., §§ 468B.315(1)-(2) (1991).

\textsuperscript{335} See \textit{CAL. GOV'T CODE} § 8670.4 (West 1992).

\textsuperscript{336} See \textit{id.} § 8670.7(a). The California Legislature declared that "[t]he federal government plays an important role in preventing and responding to petroleum spills and it is in the interests of the state to coordinate with agencies of the federal government, including the Coast Guard . . . ." \textit{Id.} § 8670.2(l).
Each group notes the amounts of oil recovered, and the amounts of labor involved in the recovery process, to facilitate liability calculations after the immediate hazard is past.\(^\text{337}\)

After containment, the final on-site step is to clean up as much of the oil as possible. Federal laws provide for coordination of public entities, including United States Coast Guard strike teams, in a cleanup effort under the National Contingency Plan.\(^\text{338}\) Under Oregon law, the state's Department of Environmental Quality is required to respond to the oil spill.\(^\text{339}\) Oregon also mandates that the party who owns or has control over oil that entered the water take all feasible measures to remove the oil.\(^\text{340}\) California has a similar provision requiring "any person" responsible for the discharge to contain and clean up the oil.\(^\text{341}\)

Due to Oregon's laws, the Italia Peanut's owner hires the contractors who are pre-identified in the required contingency plans, and they begin cleaning up the spill alongside the United States Coast Guard and other federal authorities. California law mandates that the tanker follow the Governor's contingency plan and report to the state's administrator.\(^\text{342}\) The number of different regulations governing cleanup of the oil spill, and the number of different agencies involved, confuses operations and causes valuable cleanup time to be irretrievably lost. As one commentator aptly notes, "[i]t is at times like this when having too many federal and state response agencies can cause paralysis by analysis, wreaking havoc on efforts and best intentions to conduct a

\(^{337}\) In Oregon, for example, state agencies may seek reimbursement from the discharger for any expenses they incur in the containment or cleanup of discharged oil. OR. REV. STAT. § 468B.320(4) (1991).

\(^{338}\) Oil Pollution Act, supra note 4, § 4201(b). It is interesting to note that, under the Oil Pollution Act of 1990, parties involved in cleanup operations consistent with the National Contingency Plan are provided limited immunity from liability. Id. § 4201(a).

\(^{339}\) See OR. REV. STAT., §§ 468B.395 (1991) (detailing Department duties) and id. § 468B.035 (mandating compliance with federal regulations).

\(^{340}\) Id. § 468B.315(1). If the oil cannot be removed or collected, the owner or discharger must then take all practicable measures to treat and disperse the oil. Id. § 468B.315(2).

\(^{341}\) CAL. GOV'T CODE § 8670.25 (West 1992).

\(^{342}\) Id. § 8674.7. All parties responsible for the discharged oil, all of their agents and employees, and all state and local authorities must carry out cleanup operations in accord with applicable contingency plans, and are all governed by California's administrator unless the Coast Guard gives contrary instructions. Id. § 8670.27(a) (West Supp. 1994).
coordinated and timely response effort. Too many agencies, with conflicting priorities and interests, can greatly hamper a response.\textsuperscript{343}

As parties quarrel over the coordination of efforts, the oil spreads to nearby state and federal beaches. Although the United States Coast Guard contractors have placed several booms just offshore to prevent spread of the oil spill, a significant amount of oil still manages to reach shore. The oil that washes up on the recreational beaches threatens to close them for the season, only halfway through the summer's high-usage period. The threatened seashore is also a refuge for marine mammals and shorebirds.

After the spill, the Department of Health places signs prohibiting the harvest of shellfish for the foreseeable future. Recreational ocean activity, including boating and surfing, is also indefinitely delayed to avoid safety hazards as well as interference with the cleanup efforts.

After cleanup, the question still remains as to who is liable to whom for cleanup costs and environmental damage resulting from the oil spill. OPA '90 provides for a limit on liability, but this limit is not consistent with California and Oregon's liability exposure. States are permitted to impose greater liability on shippers than OPA '90 imposes, so a discharge spanning two states potentially could create responsibility for maximum penalties in both states and under federal law.

Under federal law, liability without regard to fault is imposed on responsible parties for the discharge of oil into the navigable waters adjoining shorelines.\textsuperscript{344} Liability equals the removal costs attributed to action taken by any person in accordance with the National Contingency Plan, plus costs of removal incurred by any federal or state agencies.\textsuperscript{345} Responsible parties are also liable for damages as defined by section 1002(b) of the Oil Pollution Act.\textsuperscript{346}

\textsuperscript{343} Edgcomb, supra note 95, at 412.
\textsuperscript{344} Oil Pollution Act, supra note 4.
\textsuperscript{345} Id.
\textsuperscript{346} Id. at §§ 484, 486, 489. This section provides: "'Damages' means damages specified in section 1002(b) of this Act, and includes the cost of assessing these damages." Id. Section 1002(b) provides:

(b) COVERED REMOVAL COSTS AND DAMAGES.

(1) REMOVAL COSTS—The removal costs referred to in subsection (a) are—
Oregon law also provides for strict liability for damage to persons or property caused when oil is discharged in Oregon state waters.\textsuperscript{347} Any person who fails to fulfill the statutory duty to clean up the spill is held responsible for the necessary expenses incurred by the state in carrying out authorized ac-

\begin{itemize}
  \item[(A)] all removal costs incurred by the United States, a State, or an Indian Tribe under subsection (c), (d), (e), or (f) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), as amended by this Act, under the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.), or under State Law; and
  \item[(B)] any removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan.
\end{itemize}

(2) DAMAGES.—The damages referred to in subsection (a) are the following:

\begin{itemize}
  \item[(A)] NATURAL RESOURCES.—Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian tribe trustee, or a foreign trustee.
  \item[(B)] REAL OR PERSONAL PROPERTY.—Damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property.
  \item[(C)] SUBSISTENCE USE.—Damages for loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.
  \item[(D)] REVENUES.—Damages equal to the net loss of taxes, royalties, rents, fees, or net profit shares due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by the Government of the United States, a State, or a political subdivision thereof.
  \item[(E)] PROFITS AND EARNING CAPACITY.—Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall recoverable by any claimant.
  \item[(F)] PUBLIC SERVICES.—Damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil, which shall be recoverable by a State, or a political subdivision of a State.
\end{itemize}

\textit{Id.} at §§ 489-90.

\textsuperscript{347} \textit{OR. REV. STAT.}, § 468B.305(1) (1991) (providing it is unlawful to discharge oil regardless of whether spill is the result of intentional or negligent conduct). This section is not violated, however, in the following circumstances:

(a) the person discharging the oil was authorized to do so pursuant to a permit under section 468B.050; or (b) the oil's entry was caused by (1) an act of war, sabotage, or God; (2) state or federal negligence; or (3) a third party. \textit{Id.} § 468B.305(2). See also \textit{id.} § 468B.310(1) (providing strict liability for discharge of oil); \textit{id.} § 468B.310(2) (allowing the person found liable under § 468B.310(1) to maintain an action against another person whose acts or omissions caused the unlawful entry of oil into the waters of the state).
Any person who willfully or negligently causes the discharge of oil into Oregon waters also incurs, in addition to any other penalties available, a civil penalty commensurate with the amount of damage caused.\textsuperscript{349} The amount of the penalty is determined by the director of the Department of Environmental Quality after taking into consideration the gravity of the violation, the previous record of the violator, and any other factors the director finds appropriate.\textsuperscript{350} Criminal penalties are also available for willful or negligent violation of sections 468B.025 (unapproved discharge of oil into marine waters) or 468B.050 (discharge with a permit required).\textsuperscript{351}

California law attaches liability to any responsible party, without regard to fault, for any damages caused by the discharge of oil.\textsuperscript{352} A "responsible party" is defined as the owner of oil, transporter of oil, person accepting responsibility for oil, vessel owner, or vessel operator.\textsuperscript{353} Any injured person has a right of recovery against the responsible party.\textsuperscript{354} Additionally, the state may recover a penalty assessed in proportion to the amount of oil discharged.\textsuperscript{355}

California law provides a right of private attorney general actions,\textsuperscript{356} and state courts may impose injunctions against any person acting in violation of the oil spill laws.\textsuperscript{357} Any person who intentionally or negligently violates any California oil spill law shall also be subjected to a civil penalty of not less than $25,000 or more than $500,000 for each violation.\textsuperscript{358} Additionally, there is an administrative civil penalty not to exceed $100,000 for any negligent or intentional violation of the oil spill laws.\textsuperscript{359} Criminal penalties are also available for knowing violations of California oil spill laws.\textsuperscript{360}

\textsuperscript{348} Id. § 468B.320(4).
\textsuperscript{349} Id. § 468B.450(1).
\textsuperscript{350} Id. § 468B.450(1).
\textsuperscript{351} Id. § 468B.990(1).
\textsuperscript{352} CAL. GOV'T CODE § 8670.56.5 (West 1993).
\textsuperscript{353} Id. § 8670.3(n).
\textsuperscript{354} Id. § 8670.56.5.
\textsuperscript{355} Id. § 8670.67.5.
\textsuperscript{356} Id. § 8670.69.
\textsuperscript{357} Id. § 8670.57.
\textsuperscript{358} Id. § 8670.66.
\textsuperscript{359} Id. § 8670.67.
\textsuperscript{360} Id. § 8670.65 (West 1993).
Individuals and state agencies may choose to sue Italia corporation for environmental damage, property damage, and any economic losses sustained from the oil spill.\footnote{Hansen & Ray, supra note 2, at 30. After the public viewed photos of "oil-clad birds, otters, seals, and other wildlife—even whales," Exxon may be asked to pay the value of a per-organism recovery rather than simply the costs of restoration. \textit{Id.} Economic losses after the Exxon Valdez spill stem from direct losses to the fishing industry, and indirect damages to tourism and related industries. \textit{Id.}}

Due to involvement at both the federal and state level, especially if the spill is deemed a result of negligent, willful, or intentional acts of the owner or operator, the actors potentially could go to three separate jails and be civilly responsible for damages in three different courts. Presumably the federal government, California, and Oregon could impose all of the applicable penalties without deduction or double jeopardy limitations, though it seems unfair to permit triple fines and triple prison time simply because a tanker strikes a rock bordering two states rather than squarely within a single state. This multiple-punishment scenario illustrates a problem of great concern to shippers, which they had hoped OPA '90 would resolve.

Another problem in intra-state spills, where numerous agencies and actors are involved, is to coordinate all of the available resources into one group with the same priorities.

\section*{IV. Proposal}

Regardless of their infrequency, the magnitude of oil spills such as the Amoco Cadiz\footnote{The Amoco Cadiz disaster involved a fully loaded ship striking ground off the Brittany coast of France in March 1978, spilling 65 million gallons of crude oil. For a more detailed discussion, see DAVID W. ABECASSIS \& RICHARD L. JARASHOW, OIL POLLUTION FROM SHIPS: INTERNATIONAL, UNITED KINGDOM AND UNITED STATES LAW PRACTICE, 1985, 555-59 (1985).} and the Exxon Valdez\footnote{For a discussion of the Exxon Valdez spill, see Hansen & Ray, supra note 2, at 27; see also Keeva, supra note 1, at 66.} indicate that prevention of a spill should be the primary goal of oil spill legislation. Once spilled, very little oil can be recovered effectively.\footnote{Hearings on S.B. 242 before the Senate Committee on Agriculture and Natural Resources, 66th Leg., Reg. Sess., Exhibit G, at 3 (Feb. 4, 1991).} Environmental damage typically occurs within the first few days after the oil spill.\footnote{See JENNIFER BAKER, R. CLARK \& P. KINGSTON, \textit{Two Years After the Spill: Environmental Recovery in Prince William Sound and the Gulf of Alaska}, 7 (1991).} A quick
glance at the regulatory scheme of most states, including the states analyzed above, indicates that the primary focus in oil spill regulation is not prevention, but rather cleanup of the spill and redress for its effects.\textsuperscript{366} A successful focus on prevention of spills would decrease ecological pollution as well as diminish penalties imposed on spillers.

The real problem is \textit{how} to prevent oil spills. First, ship owners must first take precautions to avoid obstructions. All oil-bearing ships should be fitted with more advanced sonar technology in order to detect sub-surface rocks and other obstacles that pose a danger.\textsuperscript{367} Marine associations should update navigational charts marking major ship obstructions, such as sandbars and large rocks, more frequently. Additionally, ships should choose the safest route to travel, not the fastest route. Legislatures should perhaps outlaw business incentives upon speed of oil delivery, although such a measure is unrealistic in a primarily free-market economy and would need to be done on an international basis to preserve competition. Vessel-tracking systems, similar to air-traffic controlling systems for ships, should be uniformly instituted to coordinate tanker traffic. Where waters are particularly treacherous, ship escorts should be standard procedure.

Second, measures requiring safer ship construction, such as the double hulls already required for each vessel, should be implemented. This "re-structuring" of the oil industry would make ships more resistant to spills, even when they strike a small obstacle.

A secondary goal is better preparedness for containment and cleanup of oil spills in order to minimize the impacts from an oil spill once it occurs. Although the Oil Pollution Act of 1990 attempted to achieve these goals, the legislation was not uniform or consistent, since it left primary regulatory authority to individual states.\textsuperscript{368} Some argue that OPA '90

\textsuperscript{366} See Appendix for comparison of laws between the West Coast states.
\textsuperscript{367} Submerged rocks (and icebergs) are a major source of danger to ships in the water.
\textsuperscript{368} 33 U.S.C. § 2718 (West Supp. 1991); see also Oil Pollution Act, supra note 4. Section 1018 of the Act states:

Nothing in this Act or the Act of March 3, 1851 shall (1) affect, or be construed or interpreted as preempting, the authority of any State or political subdivision thereof from imposing any additional liability or requirements with respect to—

(A) the discharge of oil or other pollution by oil within such State;
was a failure for this reason; other claim it was a victory for states' rights, because states can protect their own primary interests. A uniform regulatory scheme should be adopted in order to implement stringent regulations that are focused on prevention and are consistent throughout the states.\textsuperscript{369}

The federal government should enforce stricter regulations, despite possible conflicts with state law. Alternatively, identical regulations should be imposed in all states to maintain consistency. Alaska's regulations provide a model regulatory scheme, as they are the most stringent. Several California provisions, such as the requirement for ships to have one billion dollars' financial responsibility by the year 2000, should be added to strengthen the regulations' focus on prevention.

Punitive damages may also be an effective means of encouraging greater preventive efforts. The Supreme Court recently held that punitive damages do not violate the Eighth Amendment’s prohibition on excessive fines and penalties.\textsuperscript{370}

V. CONCLUSION

This article provides a broad overview of the new oil pollution laws promulgated in the West Coast states after the Exxon Valdez oil spill. It is not intended to be a comprehensive analysis of each state's attempt to address oil spill prevention and response issues. Instead, it is intended to introduce the reader to the general oil spill issues that have been addressed by each of the West Coast states. For a more thorough review, the reader should seek out the complete text of a state's particular statute. Additionally, many regulations

\begin{itemize}
  \item (B) any removal activities in connection with such a discharge; or
  \item (2) affect, or be construed or interpreted to affect or modify in any way the obligations or liabilities of any person under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) or State law, including common law.
\end{itemize}

\textit{Id.}

\textsuperscript{369} As a practical matter, marine associations and corporations such as Chevron adhere to the strictest regulations where they transport oil, rather than changing the number of personnel each time they cross a border. Interview with Robert Murphy, Sr. Accountant at Chevron's Richmond, California Refinery, Jan. 20, 1994. In order to avoid problems such as that encountered in the hypothetical scenario above, however, oil spill regulations should be consistent.

\textsuperscript{370} See Browning-Ferris Industries, Inc. v. Kelco Disposal, Inc. 109 S. Ct. 2909 (1989). However, the ruling in \textit{Browning} simultaneously raised the specter of a challenge on due process grounds. \textit{Id.}
promulgated under these new laws are being finalized, and the detailed requirements of compliance will be found in these regulations.

Interestingly, there are several key areas that each state has attempted to address as problems with state policy and capabilities identified after the Exxon Valdez oil spill blackened the waters of Alaska. Of most importance to the marine transportation industry are the new levels of oil spill prevention and response capabilities that are required. Also of importance are the new heightened financial responsibility requirements of oil carriers.

On behalf of the public, each state has recognized the need to address the importance of inter-agency planning and response issues. The need for an agency to define its role in the event of an oil spill will, it is hoped, save valuable time as an agency's personnel mobilize to respond to a spill. Further, by attempting to promulgate consistent laws, states have recognized that vessels engaged in moving oil as cargo across multiple state waters are more likely to stay in the West Coast trade if compliance costs are manageable.

Issues of liability for an oil spiller have increased the stakes for those who transport oil across the waters of the West Coast states. With the cloak of limitation of liability removed by states, a shipper could now be financially destroyed in one unfortunate accident. The impact of sweeping, new federal oil pollution laws on the role a state's laws might play in assessing damages will be determined only as future oil spills test the new laws.

Mariners have navigated stormy seas for centuries, often uncertain of the hazards that they might face. Modern mariners and shippers will now not only face the hazards of the sea but also the increased hazard of liability and regulation as they sail with oil into the waters off the West Coast states.

371. For example, California law places no limitations on the amount a responsible party may be forced to spend to clean up the oil, mitigate adverse environmental impacts, and restore damaged resources. See Cal. Gov't Code § 8670.25 (West 1993) (requiring containment and cleanup of oil); § 8670.61.5(b) (requiring mitigation of adverse impacts to wildlife, fisheries, wildlife habitat, and fisheries habitat); and § 8670.61.5(c) (requiring a “wildlife restoration plan” to be submitted and restoration of the damaged resource). Federal law, however, limits the total response costs. See 33 U.S.C. § 2704 (Supp. 1990).
## APPENDIX

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